

**DECISION**



19954 melody  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-204562

DATE: November 3, 1981

MATTER OF: Scherr Construction Co., Inc.

**DIGEST:**

Question of small business firm's responsibility (compliance with Indian Preference requirements) is for conclusive determination by the Small Business Administration through the certificate of competency (COC) procedure, and will not be reviewed by GAO absent circumstances not relevant here.

Scherr Construction Co., Inc. protests the award of a contract to any other firm under solicitation No. W56-133-A12, issued by the Bureau of Indian Affairs, Department of the Interior. The solicitation sought offers to perform construction and remodeling work at the White Shield Day School in White Shield, North Dakota. Scherr was the apparent low responsive bidder on the procurement, but was found nonresponsive by the contracting officer, apparently based on Scherr's failure to satisfy solicitation requirements concerning the Indian Preference Program. Scherr challenges this nonresponsibility determination, claiming that it has fully complied with the Indian Preference provisions of the solicitation. We dismiss the protest.

The agency reports that Scherr is a small business firm and that it has referred the contracting officer's determination to the Small Business Administration (SBA) for final consideration. Whenever an agency determines that a small business bidder is nonresponsive, the law requires that the matter be referred to SBA, which then

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conclusively determines the bidder's responsibility by issuing or declining to issue a certificate of competency (COC). See Dan's Janitorial Service & Supply, B-200360, January 22, 1981, 81-1 CPD 36; 15 U.S.C. § 637(b)(7) (Supp. I 1977). In view of the conclusiveness of SBA's authority, our role in these cases is limited: we will become involved in the review process only after SBA has made its determination, and even then will entertain only protests which allege either fraud, Burgess, Inc., B-203603, June 30, 1981, 81-1 CPD 547, or that information vital to the responsibility determination was willfully disregarded, thus implying bad faith. Dan's Janitorial Service & Supply, supra. It does not appear that SBA has yet ruled on this matter. In any event, the protester has not alleged fraud or bad faith. Accordingly, this protest is not for consideration by our Office.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel